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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1942.

—  
No. **831**  
—

THE HARTFORD ELECTRIC LIGHT COMPANY, *Petitioner*,  
against  
FEDERAL POWER COMMISSION, *Respondent*.

—  
**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT AND BRIEF IN SUP-  
PORT THEREOF.**  
—

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March 16, 1943.



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*To the Honorable the Chief Justice and the Associate Jus-  
tices of the Supreme Court of the United States:*

**PETITION.**

Your Petitioner, The Hartford Electric Light Company,  
respectfully shows as follows:

The Hartford Electric Light Company, Petitioner, hereby petitions this Honorable Court for a writ of certiorari to be issued to review a judgment of the United States Circuit Court of Appeals for the Second Circuit entered February 2, 1943, affirming orders of the Federal Power Commission dated February 25, 1941, and October 21, 1941. The opinion of the Circuit Court of Appeals is reported at 131 F. (2d) 953. The opinions and orders of the Federal Power Commission are reported at 37 P. U. R. (N. S.) 193, and 44 P. U. R. (N. S.) 515; they appear at R. 1060 and 1276.

### **Nature of Proceedings Below.**

This proceeding originated in an order issued June 16, 1936, (R. 821) by the Federal Power Commission (referred to herein as "Commission"), adopting a Uniform System of Accounts for Public Utilities and Licensees subject to the provisions of the Federal Power Act, and in an order dated May 11, 1937, (R. 842) by the Commission, directing all public utilities and licensees subject to its jurisdiction to submit certain data and statements relative to their property and accounts. Petitioner did not respond to these orders. On June 14, 1939, the Commission ordered Petitioner to show cause why it should not comply (R. 21). Thereupon, Petitioner appeared specially before the Commission and denied jurisdiction upon the ground that Petitioner is not a "public utility" or "licensee" within the terms of the Federal Power Act (R. 24). The matter was referred to a trial examiner (R. 59) who took testimony (R. 62-1055), received briefs, and heard oral arguments (R. 1057).

Thereafter, the Commission issued its Opinion No. 58 (R. 1060) which included certain findings of fact, conclusions of law, and a decision, and entered an order rejecting the plea of no jurisdiction and requiring Petitioner to comply with the aforesaid orders (R. 1073). Petitioner applied for a rehearing (R. 1080) which was granted (R. 1104), oral argument was had before the full Commission (R. 1116), and the Commission issued Opinion No. 58-A, reaffirming the find-

ings and conclusions of Opinion No. 58 (R. 1276). Petitioner's application for rehearing (R. 1284) was denied (R. 1290). A petition for review under Section 313(b) of the Federal Power Act (49 Stat. 860, 16 U. S. C. A., Sec. 825l), was filed with the United States Circuit Court of Appeals for the Second Circuit and on November 25, 1942, that Court promulgated an opinion affirming the orders of the Commission (R. 1293), and on February 2, 1943, entered its judgment pursuant to its opinion (R. 1320).

### **Statement of Jurisdiction.**

The jurisdiction of this Court is invoked under Section 313(b) of the Federal Power Act (49 Stat. 860, 16 U. S. C. A., Sec. 825l), and Section 240 of the Judicial Code, as amended (43 Stat. 938, Sec. 1, 28 U. S. C. A., Sec. 347). The statute, the interpretation of which is involved, is the Federal Power Act (49 Stat. 847, 16 U. S. C. A. Sec. 791(a)). The judgment of the Circuit Court of Appeals was entered February 2, 1943, and this petition is filed within three months thereafter.

### **Questions Presented.**

This case is a complementary companion to *Jersey Central Power and Light Co. v. Federal Power Commission*, No. 299, this Term, which has been reargued recently and is now under submission. That case concerned transmission; this case concerns generation. This case was repeatedly mentioned by name during the oral argument in that one. Together the two cases present a complete inquiry into the major features of the Federal Power Act.

The ultimate question presented in this case is whether Petitioner is a "public utility" within the meaning of the Federal Power Act. The subsidiary questions upon which that answer rests are:

1. What is the pattern of power drawn by Congress in the Federal Power Act?

2. Are the sales by Petitioner to The Connecticut Power Company sales in interstate commerce?

3. Is not Petitioner specifically excluded from Federal regulation by the negative clause in the second sentence of Section 201(b) of the Act?

4. Is Petitioner, being regulated in all its affairs by the State Commission of Connecticut, nevertheless a "public utility" within the complete definition of Section 201 of the Act?

A secondary question of procedure relates to the findings of fact by the Commission. The question is: Must not the Commission find the basic facts from which the ultimate facts are ascertained? Must it not find all facts uncontradicted on the record and material to the controversy?

### **Summary Statement of Facts.**

Petitioner is a Connecticut corporation operating under a special act of the General Assembly (Ex. 1, R. 229), generating electric energy in Connecticut and distributing over local distribution lines wholly in Hartford County, Connecticut.

The Connecticut Power Company is another Connecticut corporation which distributes electric energy at retail in certain other townships in Connecticut, also under a special charter. Petitioner is obligated by contract to supply primary capacity to Connecticut Power to meet the base primary loads in six townships in the latter Company's territory, all in Connecticut (R. 273). There is no other contract or agreement between the two Companies.

The physical situation is that Connecticut Power owns and operates a substation on property adjacent to Petitioner's generating plant. Connecticut Power owns the conductors from the wall of the plant to the substation. Petitioner neither owns nor operates any facilities outside the walls of its generating plant (except its local distribution system) (R. 264, 265). In the substation are transformers, directing devices, etc. Two sets of lines, all belong-

ing to Connecticut Power Co. run from the substation, one to the local retail territory of Connecticut Power Co. in Connecticut, and the other north to the Massachusetts boundary.

The commercial situation is that Connecticut Power takes title to its energy at the bus bar inside the generating plant and conducts the energy to its substation over its own conductors outside the plant walls. From the substation some of the energy is directed by Connecticut Power Co. one way and some the other. At the time of delivery Petitioner has no knowledge of the destination of the energy, and no control whatsoever over that destination. Its part of the transaction is complete when it delivers the energy at the bus bar in the plant. Its obligation to deliver extends only to the specified basic loads of intra-Connecticut territory of the purchaser.

The energy delivered by Petitioner is not in a form in which interstate transmission is possible (R. 105). The Connecticut Power Company must transform such of the energy as it puts on its interstate line (R. 105, 134, 160, 184).

The Court below correctly found that, "Although in this way energy generated by Petitioner is transmitted and re-sold in Massachusetts, Petitioner never sells any designated block of energy for specific interstate use. Connecticut Power may either distribute a particular purchase to its customers or put it on the transmission line to Massachusetts. Petitioner has no interstate energy business except in so far as its sales of energy to Connecticut Power transmitted to Massachusetts may, as 'a matter of law' under the Act, constitute interstate transactions by Petitioner." (R. 1299).

Petitioner knows as a fact that Connecticut Power does send to Massachusetts some of the energy purchased from it.

The transactions are thus: Petitioner's contract obligation to Connecticut Power is for firm capacity of 22,500

K.W., the base load of the six Connecticut townships. Suppose that in a given hour the six townships are consuming at the rate of 10,000 K.W. But Connecticut Power requests and receives from Petitioner in that hour at the rate of 12,000 K.W. Petitioner does not know, and as a matter of practice does not inquire so long as it has the requested amount available, whether the intra-Connecticut needs of its purchaser are being exceeded. Connecticut Power on its part, however, sends 10,000 K.W.H. out of its substation to its Connecticut townships and transforms the other 2,000 K.W.H. and puts it on its lines to Massachusetts. By reason of the terms of its contract Petitioner could require that Connecticut Power limit its requests to its needs for intra-Connecticut customers, no matter how far below the contract maximum that need may be at the moment; and upon occasion it does so require. But if, as and when its generation at the moment is sufficient to meet the request of the purchaser, Petitioner pays no attention to the matter of ultimate destination.

Petitioner owns 9.19 per cent of the common stock of The Connecticut Power Company. Four of the eleven directors of Petitioner are among the fourteen directors of The Connecticut Power Company, and two of the principal officers of the two Companies are the same.

Petitioner's operations, facilities, rates and contracts, including all the above-mentioned wholesale contracts, are wholly subject to the jurisdiction of the Public Utilities Commission of the State of Connecticut (R. 195, *et seq.*)

### **Statutory Definition.**

The provisions of the Federal Power Act (49 Stat. 847-8, 16 U. S. C. A., 824) defining the term "public utility" are printed hereinafter on page 32 in a manner so that the page can be unfolded and the statute viewed by the Court throughout the reading of the brief.

### Reasons for Granting the Writ of Certiorari.

1. The Circuit Court of Appeals has decided a question of national importance, involving the construction of a Federal statute, which decision should be reviewed by this Court.

2. The decision of the Court below was in conflict with decisions of this Court, particularly the decision and opinion in *Superior Oil Co. v. Mississippi*, 280 U. S. 389; and in *Utah Power and Light Company v. Pfof*, 286 U. S. 165.

3. The case involves important questions not heretofore presented to the Court as to the construction of the Federal Power Act.

4. The decision of the Court below is not tenable under Article I, Section 8, or the Tenth Amendment to the Constitution.

5. All reasons which impelled the Court to grant certiorari in *Jersey Central Power and Light Co. v. Federal Power Commission*, *supra*, likewise apply to this case.

### Conclusion.

Wherefore, petitioner, The Hartford Electric Light Company, prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record of proceedings of said Circuit Court of Appeals for the Second Circuit in this case, numbered and entitled on its docket as No. 18036, *The Hartford Electric Light Company v. Federal Power Commission*, to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment of said Circuit Court of Appeals for the Second Circuit herein

be reversed by this Court; and for such other relief as to this Court may seem proper.

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